D.B. CIVIL SPECIAL APPEAL (W) NO.647/2007
Brij Mohan
Vs.
Bhanwarlal and Ors.

23.10.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. KK Bissa, for the appellant.
Mr. RK Thanvi,for the respondents.

Heard learned counsel for the parties.

This appeal is directed against the order dated 23.5.2007 passed by learned Single Judge dismissing S.B. Civil Writ Petition No. 2486/2007 holding that the document Annexure-5 is a document of partition and not a memorandum of partition and has rightly found to be requiring registration by the trial Court.

The question has arisen in the circumstances that the petitioner-appellant has filed a suit for permanent injunction which is pending in the Court of Civil Judge (Jr.Div.), Jaisalmer for restraining the defendant from interfering with the possession and enjoyment of the property situated at Jaisalmer. According to the aforesaid assertion the right to seek

injunction flows from the fact that the property in question is ancestral property of plaintiffs and defendants which was partitioned amongst descendants of Late Shri Banshi Lal S/o Shri Tejkarndas, Shri Pratapchand S/o Shri Jodhraj, are descendants of Shri Paramsukh Das S/o Shri Bachchhraj by the deed of partition. In support of partition, reliance was placed Annexure-5 executed on stamp of Rs.5/- on 11.12.1988 between Banshi Lal S/o Shri Tejkarandass, Gordhan Das, Balkrishan, Madan Mohan, Krishna Vallabh, Shyam Sunder, Brijmohan sons of Shri Srikrishan Das Ji and Chuturbhuj, Brijmohan, Girdhar Lal, Gopikishan, Ramesh Kumar, Jugalkishore sons of Shri Askaran Das Ji. The plaintiffs are two sons of Shri Srikishan Das and the widow of Shyam Sunder Das. All three sons of Shri Srikrishan Das and plaintiff No.4's husband Shyam Sunder Das were parties to the partition deed.

When the plaintiffs sought to produce the partition deed in evidence and to be marked as exhibit an objection was raised thereto that the document being partition deed is not adequately stamped and is unregistered, hence was not admissible in evidence. Therefore, it cannot be exhibited also.

The plaintiffs have contended that the

document being merely a family arrangement was neither compulsorily registerable nor required stamps. However, the trial court found it to be a deed of partition requiring registration but did not give any finding about it being properly stamped and declined to admit it in evidence.

The order of the trial Judge dated 30.8.2006 was challenged by way of writ petition which has been dismissed as aforesaid vide judgment under appeal.

We are in agreement with the learned Single Judge and learned trial Judge that the document in question is deed of partition and not a memorandum of partition which has taken place in past family arrangement and that being so it required proper stamps as well as registration.

The learned counsel has urged before us that the document which is required to be registered but is not registered though it may not be admissible for proving that transaction, but it can be used for collateral purpose and, therefore, document is admissible to prove the exclusive possession of the plaintiffs over the part of the ancestral property in question.

However, notwithstanding the aforesaid

contention even if it be accepted, the petitioner cannot succeed because document being a document of partition needs to be properly stamped. The trial court has not decided whether the document has been properly stamped and if not properly stamped, the trial court is under obligation to impound the document and sent it to the appropriate authority under the Stamp Act for the purposes of recovering proper stamp duty on it along with penalty imposable before considering admissibility of the document.

Learned counsel for the appellant has urged that the appellant has alternatively prayed that the document may be considered for collateral purposes but the same has not been considered by the trial Court.

We are of the opinion that it being a very important aspect of the matter, notwithstanding, having noticed the issue raised before it but in not deciding the same, the trial Court has committed error on the face of record. In that view of the matter, while agreeing with the finding that the document in question is deed of partition and not a memorandum of partition, the matter is remitted back to the trial court for deciding the issue about the Stamp Duty payable on the document and the document if

imporperly stamped to take action under the provisions of the Stamp Act and also to consider whether for the purpose of the suit, this document can be used for collateral purpose as urged by learned counsel for the appellant. In case, the document is found to be properly stamped and still not registered, the plaintiffs are free to take action for submitting proper stamp duty and to take proceedings for registration of document in accordance with law, if any.

Accordingly, the appeal stands disposed of.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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